

## **Exhibit 42**

NEW YORK STATE SUPREME COURT  
COUNTY OF NEW YORK

-----X  
ORCHARD HOTEL, LLC,

Plaintiff,

-against-

Index No. 850044/2011

D.A.B. GROUP, LLC; ORCHARD CONSTRUCTION, LLC; FLINTLOCK CONSTRUCTION SERVICES LLC; JJ K MECHANICAL INC.; EDWARD MILLS & ASSOCIATES, ARCHITECTS PC; CASINO DEVELOPMENT GROUP, INC.; CITYWIDE CONSTRUCTION WORKS INC.; EMPIRE TRANSIT MIX INC.; MARJAM SUPPLY CO., INC.; ROTAVELE ELEVATOR INC.; SMK ASSOCIATES INC.; FJF ELECTRICAL CO. INC.; CITY OF NEW YORK; NEW YORK STATE DEPARTMENT OF TAXATION & FINANCE; LEONARD B. JOHNSON; CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD; BROOKLYN FEDERAL SAVINGS BANK; STATE BANK OF TEXAS and JOHN DOE #1 through JOHN DOE #100, the last 100 names being fictitious, their true identities unknown to plaintiffs, and intended to be the tenants, occupants, persons or corporations, if any, having or claiming an interest in or lien upon the premises described in the complaint,

REPLY AFFIDAVIT  
OF DAVID AVIRAM

Defendants.

-----X

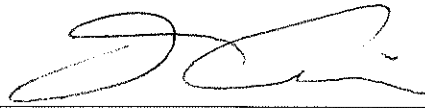
DAVID AVIRAM, being duly sworn, deposes and says:

1. I am an authorized signatory for Orchard Hotel, LLC ("Mortgagee"). I make this affidavit in further support of Mortgagee's Motion for Summary Judgment, Severance of Cross-claims and Counterclaims, Appointment of a Referee, and Other Relief. The facts set forth herein are based on my personal knowledge and my review of the loan files provided to Mortgagee by Brooklyn Federal Savings Bank, the assignor of the Mortgages, of which I am the custodian.

2. Attached hereto as Exhibit A is a true and correct copy of a letter dated September 1, 2010 from D.A.B. Group LLC to Brooklyn Federal Savings Bank.

3. Attached hereto as Exhibit B is a true and correct copy of the Gap Secured Promissory Note, dated November 8, 2007, in the amount of \$2,226,695.86, by D.A.B. Group LLC in favor of Brooklyn Federal Savings Bank.

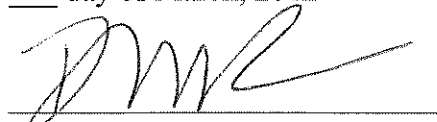
4. Attached hereto as Exhibit C is a true and correct copy of the Gap Mortgage, dated November 8, 2007, in the amount of \$2,226,695.86, by D.A.B. Group LLC, as Mortgagor, to Brooklyn Federal Savings Bank, as Mortgagee. The Gap Mortgage was duly recorded in the Office of the New York City Register on December 3, 2007 at CRFN 2007000596684, as evidenced by the Recording and Endorsement Cover Page contained in Exhibit C.



David Aviram

Sworn to before me this

<sup>April</sup>  
2nd day of ~~March~~, 2012



Notary Public

**DANIELLE LESSER**  
Notary Public, State of New York  
No. 02LE5006580  
Qualified in New York County  
Commission Expires Jan. 4, 2015